

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TEMEKE SUB-REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

CIVIL APPEAL NO. 26630 OF 2023

*(Appeal from the decision of District Court of Temeke, One Stop Judicial Centre at Temeke
in Revision No. 27 of 2023)*

STELLA SEVERINE MILINGA..... APPELLANT

VERSUS

DANIELA WANDELIN HANGU

(As Administratrix of the Estate of the Late Wandaline Hangu)..... RESPONDENT

JUDGMENT

16th May & 1st July, 2024

BARTHY, J.:

The appellant, aggrieved by the decision of the District Court of Temeke, One Stop Judicial Centre at Temeke, through Revision No. 27 of 2023, appeals to this honourable court on the following ground;

- 1. That, the trial court erred in law by dismissing the appellant Revision on the ground that, it was used as alternative for appeal while the appellant had ground for revision.*

Wherefore, the appellant prays for the appeal to be allowed, the judgment of the District Court to be quashed and set aside, and this court



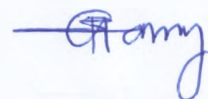
order the application for revision be heard by the District Court, and any other relief deemed fit to be awarded by this court.

The crux of this matter lies in this background: the respondent herein applied before the primary court of Temeke (the trial court) for letters of administration to administer the estate of the late Wendeline T. Hangu through Probate Cause No. 33 of 2020, where the court granted letters of administration.

In the process of administration, the respondent continued with the distribution of the deceased's estate, which faced an objection from the appellant. This led to the decision delivered on 10th August 2023, which the appellant challenged to the district court by way of revision. The matter was dismissed by the said court, stating that revision was not a substitute for an appeal.

The hearing of the matter was through written submission by party consensus. The submissions were filed before the court, except for the rejoinder submission, which was not filed by the appellant.

The appellant's submission was prepared under the gratis services of the Tanzania Women Lawyers Association by Ms. Glory Sandewa. It was her submission that the appellant is the wife of the deceased Wendeline



Hangu, and the respondent was appointed as the administratrix of her late husband.

It was her further submission that the appellant was not considered one of the heirs of the deceased despite being his legal wife, even after submitting the marriage certificate. This prompted the appellant to file the application for revision at the District Court of Temeke at One Stop Judicial Centre (the district court), which was dismissed on the ground that it was used as an alternative to appeal, which she claimed it was not. To support her argument, she referred to Section 79 (1) and (3) of The Civil Procedure Code CAP 33 R.E 2022 (the CPC).

Ms. Sandewa stated that the party may seek for revision if the subordinate court has acted in the exercise of its jurisdiction illegally or when there is material irregularity. She also stated the powers of the court to exercise its revisional powers are not limited; thus, the district court had the power to entertain the matter. Therefore, she urged the appeal should be allowed, and the relief sought should be granted.

In reply to the submission, the respondent raised an objection that the submission filed by the appellant was filed out of time and without any leave of the court. He stated that according to the copy of the submission by the appellant, it shows that it was filed on 31/05/2024,



about 7 days late than the date she was ordered to file, without any leave of the court.

The respondent further contended that failure to file the submission timely amounts to non-appearance. This position was reinforced in the case of **Said Mutamweziamutwe vs. Kondo Shomari**, Civil No. 01/2008, High Court of Tanzania, at Dsm (Unreported), on page 2, paragraph 2.

Now addressing the grounds of the appeal, it was counter-argued by the respondent that, the appellant claimed to be one of the heirs of the deceased as the legal wife, however she has failed to prove so. Hence, the court disregarded her evidence under Section 110 of the Evidence Act, Cap 6, R.E 2019. She added that the appellant could not advance any grounds for revision to show that the trial magistrate failed to analyze it.

It was further submitted that the appellant was the one who abandoned her own marriage when the deceased was sick and contracted an Islamic marriage with another man, with whom she has two children.

The respondent further stated that the appellant has raised a new issues on appeal contrary to the requirements of the law, as discussed in the case of **Farida & Another vs. Domina Kogaruki**, Civil Appeal No. 136 of 2006, quoting the case of **Eva Simon Kasongwa vs. David**

Edward Mwakalindile, Misc. Matrimonial Appeal No. 11 of 2018 (Unreported), where it was held that the appellate court cannot consider or deal with issues that were not canvassed, pleaded, or raised at the lower court. The respondent therefore prayed for the appeal to be dismissed.

Having reviewed the opposing submissions from both sides, the court finds it necessary to first address the issue raised by the respondent regarding the appellant's late filing of her written submission. This must be resolved before determining the merit of this appeal.

It is undisputed that the court ordered the matter to be disposed of by way of written submissions, providing a specific schedule for each party. The appellant was required to file her submission in support of the grounds of appeal no later than 24th May 2024, while the respondent was to file her reply by 3rd June 2024, and any rejoinder submission was to be filed by 14th June, 2024.

However, the case records indicate that the appellant filed her written submission on 30th May 2024, and the respondent filed her reply on 13th June 2024. Consequently, both parties filed their submissions beyond the deadlines set by the court without seeking an extension of time or providing any reason for the delay.



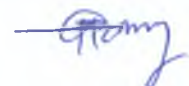
Therefore, before delving into the substantive issues of the appeal, it is imperative for the court to address the procedural irregularities concerning the untimely submissions by both parties.

It is now an established principle that failure to file written submission after being ordered by court, it is as good as failing to appear in court and prosecute the case. This was stressed in the case of **Godfrey Kimbe vs. Peter Ngonyani** (Civil Appeal No. 41 of 2014) Court of Appeal of Tanzania at Dar es salaam [2017] TZCA 1, where the court held;

Among many others, the Court held that failure by a party to lodge written submissions after the Court has ordered a hearing by written submissions is tantamount to being absent without notice on the date of hearing.

It is imperative for parties to adhere strictly to court orders and deadlines to ensure their case is heard fairly and on its merits. Non-compliance disrupts the judicial process, and ultimately making a mockery of justice.

In the case of **Famari Investment T. Ltd vs. Abdallah Selemani Komba**, the High Court at Mbeya reiterated the importance of complying with court orders. The court quoted with approval from the earlier case of **Olam Tanzania Limited vs. Halawa Kwilabya**,



underscoring that failure to comply with court orders is taken seriously and can lead to significant legal consequences, holding that;

"Now what is the effect of a court order that carrier instructions which are to be carried out within a pre determined period? Obviously such an order is binding. Court orders are made in order to be implemented; they must be obeyed. If orders made by courts are disregarded or if they are ignored, the system of justice will grind to a halt or if will be so chaotic that everyone will decide to do only that which is conversant to them. In addition, an order for filing submission is part of hearing. So if a party fails to act within prescribed time he will be guilty of in-diligence in like measure as if he defaulted to appear...This should not be allowed to occur. Courts of law should always control proceedings, to allow such an act is to create a bad precedent and in turn invite chaos."

In the present matter, the court has observed that the appellant has failed to pursue the appeal diligently. Failure to comply with the required procedural steps, by not filing written submissions within the prescribed time. As a result, the appeal is be dismissed for want of prosecution.



It is so ordered.

Dated at Temeke this 1st day of July, 2024.





G. N. BARTHY

JUDGE

Delivered in the presence of the Appellant in person, Respondent in person, RMA. Ms. Bernadina and in the absence of their Advocates.